

In the Matter of)
)
IP-Enabled Services) WC Docket No. 04-36

The Rural Independent Competitive Alliance (“RICA”), by its attorney, files these Reply Comments in response to the comments filed May 28, 2004.¹ RICA is a national association of approximately 80 competitive local exchange carriers (“CLECs”) that are affiliated with rural incumbent local exchange carriers (“ILECs”) and provide facilities-based service in rural areas.

I SUMMARY

IP-Enabled services cannot be provided to the public in the absence of adequate, well maintained facilities. In high-cost, low density rural areas revenues from sources such as access charges and universal service support in addition to end user revenues are essential to such facilities. RICA member rural CLECs have demonstrated their intent and ability to construct and operate the necessary facilities to bring advanced services to rural areas historically neglected by large carriers. As the industry evolves to packet-switched, IP-Enabled services, the universal

¹ Public Notice, "Wireline Competition Bureau Extends Reply Comment Deadlines for IP-Enabled Services Rulemaking and SBC's "IP Platform Services" Forbearance Petition." DA 04-1685 (rel. Jun. 9, 2004).

service support and intercarrier compensation mechanisms must evolve as well. It may be that revisions to Section 254 of the Act are necessary to provide adequate support for broadband facilities. The Commission should reject proposals to exempt IP-Enabled services from contributing to Universal Service, compensating providers of facilities, or meeting social goal obligations. None of these objectives can be obtained on a voluntary basis where there is a competitive advantage to avoiding them, nor can competitive neutrality be achieved.

II DISCUSSION

A. The Benefits of IP-Enabled Services Will Only Be Available in Rural Areas If Sufficient Revenue Streams are Available to Construct and Maintain Necessary Facilities.

RICA's initial comments, as well as those of most other parties, recognized the important public benefits which can be expected from encouraging the development and deployment of IP-Enabled services. For rural areas in particular however, these benefits will not be available if the evolution to packet-switched, IP based services is accompanied by elimination of the revenue streams presently available to facilities-based providers through access charges and universal service support. The stark fact of life is that without revenue from sources other than direct payments by end users, the necessary facilities cannot be constructed and maintained in high-cost, low density rural areas. This is not to say that the present systems should be maintained as is, but that the necessary facilities will not exist unless the investors in those facilities have the opportunity to recover their costs, including a return on investment, without depending solely on the end user.

The comments of The Nebraska Rural Independent Companies make the point well that

underneath all the applications, there must be a network and that the evolution of the industry means that Universal Service Support must be directed to support network facilities rather than services.² RICA agrees with this point. However, as indicated in RICA's initial comments, the change to facilities-focused support may not be achievable because of the "chicken and egg" problem embedded in the current Section 254(c)(1)(B), which presumes a more historic relationship between services and facilities.³

The Nebraska Independents also propose that the "Retail Service Provider Pays" concept should be made applicable to VOIP calls which access the Public Switched Network ("PSTN").⁴ RICA concurs, and would add that as the industry evolves the term PSTN may lose its significance. The concept that the retail service provider must compensate the facilities provider should be retained, however the network is characterized.

² The Nebraska Rural Independent Companies at 8-10. ("Nebraska Independents")

³ RICA at 5.

⁴ Nebraska Independents at 11.

Some parties, however, choose to ignore the fact that applications operate only if there is an underlying network, and that in rural areas the cost of constructing and maintaining networks, broadband or otherwise, is so much higher that revenue sources beyond the end user are required. Thus the concepts of access charge exemption promoted by AT&T,⁵ voluntary intercarrier agreements suggested by the VON Coalition, or reciprocal compensation proposed by CompTel/Ascent,⁶ will all fail to provide sufficient revenues to support ubiquitous access in rural areas. Not only would exemption for VOIP services fail to provide adequate revenues, it would also encourage extension of the spamming that plagues email to all forms of IP-enabled communications, including voice. Reciprocal compensation, at least as currently implemented, also produces inadequate revenue.⁷

The suggestion of the VON Coalition that intercarrier compensation can be resolved through voluntary agreements between carriers is entirely unrealistic, at least for small rural carriers. The simple fact, demonstrated by both recent history and continuing current debates over “transiting traffic” and “phantom” traffic, is that large carriers will simply refuse to pay

⁵ AT&T at 21.

⁶ CompTel/Ascent at 16.

⁷ ALTS supports the concept that there must be adequate compensation, however it is not clear what it means by a “regime that does not distinguish between reciprocal compensation and access charges.” ALTS at 5. In the end the important point is that the compensation is adequate.

small rural carriers, who will have no leverage in entirely unbalanced “negotiations” and no real recourse except for expensive and protracted litigation.

B. Service Providers’ Social Obligations Will Not Be Met On a Voluntary Basis.

RICA’s initial comments pointed out that the many obligations imposed on local exchange carriers will not be fulfilled if a significant portion of the market shifts to providers without such obligations, and that a lack of comparable obligations among providers of comparable services distorts competition.⁸ Nevertheless, the VON Coalition suggests that such social goals as emergency services and access to persons with disabilities can be best achieved through voluntary efforts without specific regulatory mandates.⁹ While RICA agrees that the Commission should encourage both intra-industry dialogue and communication with users such as emergency service providers and the disabled community, in the end where there is a competitive advantage to be gained by avoiding the costs of meeting these responsibilities, the Commission can be certain that there will not be ubiquitous compliance. The result will be both failures in the provision of vital services, and a distortion of the competitive marketplace in which local exchange carriers, ILEC and CLEC alike, will be disadvantaged. Other comments, such as those of AT&T¹⁰ recognize the need to impose obligations, at least after some transition period.

⁸ RICA at 5-6.

⁹ VON Coalition at 24.

¹⁰ AT&T at 29-37

III CONCLUSION

RICA recognizes the extreme difficulty and importance of the challenge before the Commission simultaneously to encourage the evolution of the industry to advanced technologies and applications while ensuring that their deployment meets the long standing universal service goals. RICA members have demonstrated their commitment to bringing new technologies and services to rural areas traditionally neglected by large carriers. The continued ability of rural carriers to provide comparable services to those in urban areas is extremely dependent on the development of regulatory rules that provide an opportunity to obtain revenue streams that will support the much higher costs of serving rural America and which do not distort competition based upon irrelevant distinctions.

Respectfully submitted,

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